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PETER D. ALVEY, P.E., JANUARY 12, 2006

<p>1 2 3 4 IN THE UNITED STATES DISTRICT COURT 5 FOR THE DISTRICT OF MONTANA 6 BILLINGS DIVISION 7</p> <hr/> <p>8 UNITED STATES FIDELITY AND GUARANTY COMPANY, 9 Plaintiff, 10 and Cause No. 11 CV-04-29-BLG-RFC 12 CONTINENTAL INSURANCE COMPANY, 13 Plaintiff Intervenor, 14 v. 15 SOCO WEST, INC., BRILLIANT NATIONAL SERVICES, 16 INC., STINNES CORPORATION, and BRENNETAG 17 (HOLDING) N.V. 18 Defendants.</p> <hr/> <p>19 20 21 DEPOSITION OF PETER D. ALVEY, P.E. 22 Thursday, January 12, 2006 23 9:40 a.m. 24 Reported by: 25 Mary Goff, Professional Reporter 26 JOB NO. 13890AM</p>	<p>1 2 3 APPEARANCES: 4 5 SONNENSCHEIN NATH & ROSENTHAL 6 Attorneys for Plaintiff UNITED STATES FIDELITY 7 AND GUARANTY COMPANY 8 8000 Sears Tower 9 233 South Wacker Drive 10 Chicago, Illinois 60606 11 12 BY: JOHN I. GROSSBART, ESQ. 13 14 DAVIS, HATLEY, HAPPEMAN & TIGHE, P.C. 15 Attorneys for Plaintiff Intervenor CONTINENTAL 16 INSURANCE COMPANY 17 Milwaukee Station, Third Floor 18 100 River Drive North 19 Great Falls, Montana 59405 20 21 BY: MAXON R. DAVIS, ESQ. 22 23 LINQUIST & VENNUM P.L.L.C. 24 Attorneys for Defendants SOCO WEST, INC., 25 BRENNETAG WEST, INC., BRILLIANT NATIONAL 26 SERVICES, INC., STINNES CORPORATION, and 27 BRENNETAG (HOLDING) N.V. 28 4200 IDS Center 29 80 South Eighth Street 30 Minneapolis, Minnesota 55402 31 32 BY: CHRISTOPHER L. LYNCH, ESQ. 33 34 ALSO PRESENT: Robert Morrison 35</p>
<p>1 2 3 4 5 6 7 8 9 10 January 12, 2006 11 9:40 a.m. 12 New York, New York</p> <p>13 Deposition of PETER D. ALVEY, P.E., 14 held at the offices of Sonnenschein Nath & 15 Rosenthal, LLP, 1221 Avenue of the Americas, 16 24th Floor, New York, New York 10020, pursuant 17 to Notice, before Mary Goff, a Notary Public 18 of the State of New York.</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing of the 8 transcript be waived, and the same are hereby 9 waived.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED that 11 all objections, except as to the form of the 12 question, shall be reserved to the time of the 13 trial.</p> <p>14 IT IS FURTHER STIPULATED AND AGREED that 15 the within deposition may be sworn to and 16 signed before any officer authorized to 17 administer an oath, with the same force and 18 effect as if signed and sworn to before the 19 Court.</p> <p>20 21 22 23 24 25</p>

1 (Pages 1 to 4)

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DEFENDANTS' 3/23/06 MOTION IN LIMINE # 3

ATTACHMENT J

PETER D. ALVEY, P.E., JANUARY 12, 2006

<p style="text-align: right;">Page 9</p> <p>1 Alvey</p> <p>2 A That is my expert rebuttal report</p> <p>3 dated October 21, 2005.</p> <p>4 Q And Exhibit 2522?</p> <p>5 A That is a supplemental expert</p> <p>6 report dated January 3, 2006.</p> <p>7 Q And do these three reports contain</p> <p>8 complete statements of all opinions that you</p> <p>9 expect to testify to at the trial of this case</p> <p>10 and the basis and reasons for those opinions?</p> <p>11 A Yeah. It provides all the opinions</p> <p>12 that I have generated to date.</p> <p>13 MR. DAVIS: Do you have any other</p> <p>14 questions or are we done?</p> <p>15 MR. LYNCH: Maybe we'll go a little</p> <p>16 bit longer.</p> <p>17 Q (BY MR. LYNCH) At this time do you</p> <p>18 have any -- do you expect to supplement these</p> <p>19 reports?</p> <p>20 A At this time, I do not.</p> <p>21 Q At this time do you expect to</p> <p>22 testify to any opinions that -- on any matters</p> <p>23 that are not expressed -- or contained in</p> <p>24 these reports?</p> <p>25 A Not at this time.</p>	<p style="text-align: right;">Page 11</p> <p>1 Alvey</p> <p>2 is that a complete list of all the documents</p> <p>3 you considered in preparing this report and</p> <p>4 forming the opinions expressed in the</p> <p>5 September 6 report?</p> <p>6 A I think there was one or two</p> <p>7 documents that didn't make it on the list.</p> <p>8 Q Do you know what those documents</p> <p>9 are?</p> <p>10 A Particularly in Harris' rebuttal</p> <p>11 report he indicated the supplemental RI was</p> <p>12 not listed, and I did have that at the time.</p> <p>13 Q The -- that would be the addendum to</p> <p>14 the remedial investigation report?</p> <p>15 A Correct. And there were a couple</p> <p>16 other groundwater monitoring reports that I</p> <p>17 had. I forget what the dates were -- on</p> <p>18 those were. But they were on a CD, and they</p> <p>19 just didn't make it onto the document list.</p> <p>20 Q Were those reports that were</p> <p>21 prepared by Tetra Tech or Pioneer?</p> <p>22 A Correct.</p> <p>23 Q Any other documents that you</p> <p>24 considered in connection with the September 6</p> <p>25 report that are not on the list?</p>
<p style="text-align: right;">Page 10</p> <p>1 Alvey</p> <p>2 MR. DAVIS: You must be done now.</p> <p>3 Q (BY MR. LYNCH) Turn to Appendix B of</p> <p>4 your initial report. Is that a list of the</p> <p>5 documents you considered in connection with --</p> <p>6 in forming your opinions?</p> <p>7 MR. GROSSBART: No. Answer that</p> <p>8 question and give me your list.</p> <p>9 A Yeah. We do have a supplemental</p> <p>10 document list.</p> <p>11 THE DEPONENT: I gave it to you</p> <p>12 yesterday, actually.</p> <p>13 MR. GROSSBART: That's the only</p> <p>14 copy?</p> <p>15 THE DEPONENT: Yeah.</p> <p>16 MR. GROSSBART: Hang on for a</p> <p>17 second.</p> <p>18 MR. LYNCH: Do you want a quick</p> <p>19 break and we can make a copy of that?</p> <p>20 THE DEPONENT: That's it.</p> <p>21 MR. LYNCH: Mark this as 2523.</p> <p>22 (Deposition Exhibit 2523 was</p> <p>23 marked.)</p> <p>24 Q (BY MR. LYNCH) The question is: The</p> <p>25 documents listed in Appendix B, were those --</p>	<p style="text-align: right;">Page 12</p> <p>1 Alvey</p> <p>2 A Not that I am aware of.</p> <p>3 Q Can you tell me what Exhibit 2523</p> <p>4 is?</p> <p>5 A 2523 is a supplemental document</p> <p>6 list that I prepared subsequent to the</p> <p>7 completion of my September 6 report.</p> <p>8 Q Does that list contain all the</p> <p>9 documents that you had considered in</p> <p>10 connection with forming the opinions expressed</p> <p>11 in all -- any -- all three of your reports?</p> <p>12 A Actually, I think that's some</p> <p>13 documents that we received subsequent to the</p> <p>14 preparation of all three reports,</p> <p>15 specifically the Unifield documents. And I</p> <p>16 also got Mr. Morrison's deposition</p> <p>17 transcript, I believe.</p> <p>18 Q Are you able to identify the</p> <p>19 documents on that list that you received</p> <p>20 subsequent to filing your final supplemental</p> <p>21 report?</p> <p>22 A Other than the two that I</p> <p>23 mentioned, I can't think of any other ones.</p> <p>24 Perhaps Dale's deposition also. I don't</p> <p>25 recall when I received everything</p>

3 (Pages 9 to 12)

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<p style="text-align: right;">Page 105</p> <p>1 Alvey 2 A I don't believe so, no. 3 Q The ASTM standards you refer to you 4 indicated dealt with TCE, correct? 5 A Correct. 6 Q Were any standards that deal with 7 the use of PCE for bitumen extraction? 8 A I'm not aware of any ASTM standards 9 with PCE. 10 Q Are you aware of any standards that 11 use PCE? 12 A No, I am not. 13 Q The PPG Industry document you 14 referred to, does that specifically refer to 15 the effect that PCE would have on asphalt? 16 A Yes. 17 Q And what did it say? 18 A Well, I would like to read the 19 document to you. But I mean, basically it 20 says spills of chlorinated solvents on 21 asphalt should be cleaned up rapidly due to 22 the fact that they deteriorate asphalt. 23 That's my recollection. 24 Q At what rate would the alleged 25 spill -- strike that.</p>	<p style="text-align: right;">Page 107</p> <p>1 Alvey 2 MR. DAVIS: I object. It's vague. 3 Q (BY MR. LYNCH) What did you mean in 4 your opinion when you said severe readily 5 noticeable deterioration? 6 A Well, readily noticeable or 7 severe -- I mean, something that someone 8 would have recognized. For example, 9 discoloration; you know, removal of the 10 bitumen to the point that the aggregate 11 became exposed, became loose. It's something 12 along those lines. What I -- what I am 13 saying there is that someone would have 14 noticed deterioration of the asphalt. 15 Q How long would the alleged spill 16 have to have been in contact with the asphalt 17 for someone -- for it to result in severe 18 readily noticeable deterioration? 19 MR. GROSSBART: Objection to the 20 incomplete nature of the hypothetical. 21 A I haven't performed a calculation. 22 Q (BY MR. LYNCH) Well, what variables 23 will affect the rate at which perc dissolves 24 asphalt? 25 MR. GROSSBART: Objection to the</p>
<p style="text-align: right;">Page 106</p> <p>1 Alvey 2 How long -- or what's the longest 3 length of time that the alleged spill could 4 have been in contact with an asphalt surface 5 before it would have resulted in severe 6 readily noticeable deterioration? 7 MR. GROSSBART: Object to the form 8 of the question. Severe readily noticeable 9 deterioration is your word, not his. 10 Deterioration -- you haven't even asked him to 11 define deterioration as to whether -- you 12 know, as to what it means from discoloration 13 to dissolution, I guess, and anything in 14 between. So your question is hopelessly 15 vague. 16 MR. DAVIS: I'll object to it as 17 vague on the same basis. I assume, just to 18 clarify in case he does go ahead and answer 19 the question as phrased, that you're talking 20 about the hypothetical spill -- or the 21 hypothetical alleged spill, or are we talking 22 about -- 23 MR. LYNCH: I believe I did say the 24 alleged spill. But if I didn't, I'll rephrase 25 the question.</p>	<p style="text-align: right;">Page 108</p> <p>1 Alvey 2 question. 3 A I mean, there's numerous variables 4 that would -- 5 MR. GROSSBART: His opinion doesn't 6 focus on the dissolving of asphalt. 7 Q (BY MR. LYNCH) What variables would 8 affect the rate at which perc deteriorates 9 asphalt? 10 A The similar variables. 11 Q And what are those? 12 A Again, there are multiple 13 variables. But the length of time it was in 14 contact with the asphalt, the -- the exact 15 nature of the asphalt, the temperature, the 16 day of the alleged spill, the wind, if it was 17 raining. I mean, any number of variables. 18 That's not an all inclusive list, but 19 multiple variables obviously. 20 Q What -- in offering an opinion 21 that -- from the alleged spill there would 22 have been severe readily noticeable 23 deterioration of the asphalt surface, what did 24 you assume the length of time of contact to 25 be?</p>

27 (Pages 105 to 108)

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<p style="text-align: right;">Page 109</p> <p>1 Alvey</p> <p>2 A Well, I mean, looking at the</p> <p>3 specifics of the alleged spill, it would have</p> <p>4 been in contact for, you know, several</p> <p>5 minutes at least. You know, at least -- I</p> <p>6 mean, I think if we went back and looked, at</p> <p>7 least 10 or 20 minutes it was likely in</p> <p>8 contact with the asphalt.</p> <p>9 Q And what makes you say that?</p> <p>10 A Again, looking at the testimony --</p> <p>11 I forget -- and maybe even it's in Harris' or</p> <p>12 Dale's reports as well, that the testimony</p> <p>13 was that it was a bulk truck and that the</p> <p>14 bulk truck pumps between 60 and 100 gallons</p> <p>15 per minute. And you have a spill of 250 to</p> <p>16 1,000 gallons.</p> <p>17 So using the 60 gallon pumping rate</p> <p>18 and dividing 250 by 60 gets you a minimum of</p> <p>19 four before anyone knew there was a spill. So</p> <p>20 there's four minutes there. So that's the</p> <p>21 minimum. And then the maximum could be hours,</p> <p>22 I suppose. Probably not hours, because</p> <p>23 someone would have eventually smelt it or</p> <p>24 something. But you know, there was some</p> <p>25 period of time -- assuming that everything</p>	<p style="text-align: right;">Page 111</p> <p>1 Alvey</p> <p>2 minutes, unless the hose was waving all over</p> <p>3 the place.</p> <p>4 Q (BY MR. LYNCH) So it's your opinion</p> <p>5 that in four minutes there would have been</p> <p>6 severe readily noticeable deterioration?</p> <p>7 A Yes.</p> <p>8 Q And what is that based on?</p> <p>9 A Again, it's based on, you know, the</p> <p>10 literature that says you need to rapidly</p> <p>11 clean it up. I didn't do any scientific</p> <p>12 calculation. But it's my opinion that there</p> <p>13 would have been noticeable -- at a minimum</p> <p>14 staining of discoloration of the asphalt.</p> <p>15 Q In the standard test results you</p> <p>16 looked at with TCE, what's the length of time</p> <p>17 of contact?</p> <p>18 A I don't know sitting here today.</p> <p>19 Q Have you ever observed perc spilled</p> <p>20 onto asphalt?</p> <p>21 A I don't believe I have ever seen a</p> <p>22 spill in progress.</p> <p>23 Q Have you ever observed asphalt after</p> <p>24 perc had been spilled on it?</p> <p>25 A I'm sure that I have. I mean, I</p>
<p style="text-align: right;">Page 110</p> <p>1 Alvey</p> <p>2 they said is correct, the truck had to be</p> <p>3 pumping PCE unimpeded for several minutes</p> <p>4 before anyone even began to respond to it. So</p> <p>5 a minimum of four minutes, a maximum of, I</p> <p>6 don't know.</p> <p>7 Q Would it make a difference if the</p> <p>8 surface was sloped?</p> <p>9 MR. DAVIS: Object as to vague. I</p> <p>10 mean, sloped at 1 degree, sloped at 45</p> <p>11 degrees?</p> <p>12 Q (BY MR. LYNCH) When you are assuming</p> <p>13 --</p> <p>14 MR. GROSSBART: Excellent objection.</p> <p>15 Q (BY MR. LYNCH) When you are assuming</p> <p>16 a minimum of four minutes, is that the assumed</p> <p>17 contact time on the -- I'm talking about the</p> <p>18 contact time between perc and the asphalt.</p> <p>19 MR. GROSSBART: On the four minute</p> <p>20 point? He just explained it. Asked and</p> <p>21 answered.</p> <p>22 A Well, like I said, it had to be</p> <p>23 pumping out for four minutes. So at some</p> <p>24 spot in the asphalt I would assume that it</p> <p>25 was in a contact for a minimum of four</p>	<p style="text-align: right;">Page 112</p> <p>1 Alvey</p> <p>2 have been to a lot of some solvent</p> <p>3 facilities, but I couldn't be more specific</p> <p>4 than that.</p> <p>5 Q Would the makeup of asphalt affect</p> <p>6 the rate at which contact with perc would</p> <p>7 result in severe readily noticeable</p> <p>8 deterioration?</p> <p>9 A Yes. There are different grades of</p> <p>10 asphalt.</p> <p>11 Q Did you make any assumptions in</p> <p>12 forming Opinion 2 as to what the makeup of the</p> <p>13 asphalt at the Dyce facility was?</p> <p>14 A No specific assumptions, no.</p> <p>15 Q What's the range at which that could</p> <p>16 affect the rate of severe readily noticeable</p> <p>17 deterioration?</p> <p>18 A I'm not quite sure I understand</p> <p>19 that question.</p> <p>20 Q The different grades of asphalt, you</p> <p>21 said, would affect the rate of severe readily</p> <p>22 noticeable deterioration. How much can that</p> <p>23 affect it by?</p> <p>24 A Probably quite a bit. I mean, if</p> <p>25 you can tell me what grade of asphalt was</p>

28 (Pages 109 to 112)

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<p style="text-align: right;">Page 117</p> <p>1 Alvey 2 discoloration. Anything that would be 3 noticeable by the employees. 4 Q What do you mean by some? Is there 5 a degree of discoloration? 6 A No, I didn't try to quantify the 7 degree of discoloration. 8 Q Do you mean some meaning if somebody 9 was capable of human perception? Is that 10 some? 11 MR. GROSSBART: I don't think he 12 said that. He said noticeable. Come on. 13 Let's move on. 14 A I mean, I -- I said noticeable. So 15 someone who would have walked out there would 16 have seen some discoloration or staining of 17 the asphalt. 18 MR. LYNCH: Do you want to take a 19 lunch break now? 20 MR. GROSSBART: That's fine. 21 (A break was taken from 12:45 p.m. 22 to 1:35 p.m.) 23 Q (BY MR. LYNCH) We're returning from 24 lunch break. Before we left for break, 25 Mr. Alvey, we were discussing Opinion No. 2 of</p>	<p style="text-align: right;">Page 119</p> <p>1 Alvey 2 mixtures, ASTM International guide? 3 A Correct. 4 Q And then the last document 5 identified on that page, bulk handling and 6 properties of PPG, chlorinated solvents, 7 perchlorethylene, trichlorethylene, 8 tri-ethane, 111-trichlorethane, PPG 9 Industries, Inc.? 10 A Correct. 11 Q Any other documents identified in 12 Appendix B or any supplemental? 13 A No. No. 14 Q And do those documents, in addition 15 to the deposition transcripts, form the 16 complete basis for your understanding as to 17 the rate at which perchlorethylene will 18 deteriorate asphalt? 19 A Subsequent to my report I have read 20 Dale's deposition. You know, so obviously he 21 addresses this issue in much more detail than 22 I do. But no. I mean, my opinion is that it 23 would have caused some noticeable 24 deterioration. 25 Q And that opinion again is based on</p>
<p style="text-align: right;">Page 118</p> <p>1 Alvey 2 your September 6 report. And I just want to 3 clarify -- 4 MR. GROSSBART: What are we on? 5 MR. LYNCH: Opinion 2, page 8. 6 THE DEPONENT: Page 8. 7 Q (BY MR. LYNCH) And is it your 8 testimony that the basis for your 9 understanding as to the rate at which perc 10 will deteriorate asphalt are the documents you 11 have identified in Appendix B to your report? 12 A And the deposition transcripts 13 of -- some of the employees testified about 14 the deterioration caused by perc as well. 15 Q Okay. Do you recall which 16 employees? 17 A No, not specific names. 18 Q And in addition to the deposition 19 transcripts it's the -- if you turn to 20 Appendix B -- page 2, Appendix B in your 21 September 6 report -- 22 A Okay. 23 Q -- it's the document, the standard 24 test methods for quantitative extraction of 25 vitamin -- from bitumen from bituminous paving</p>	<p style="text-align: right;">Page 120</p> <p>1 Alvey 2 the deposition testimony and the two documents 3 we have just identified? 4 A Correct. 5 MR. LYNCH: Mark this as the next 6 exhibit. 7 (Deposition Exhibit 2544 was 8 marked.) 9 Q (BY MR. LYNCH) I'm showing you 10 Exhibit 2544. Are those the standard test 11 methods -- 12 A Yes, it is. 13 Q -- upon which you based your 14 opinion? And I believe you have already 15 indicated that the -- that document refers to 16 using TCE and some other solvents but not perc 17 as a solvent for extracting bitumen? 18 A Bitumen. That is correct. 19 Q Okay. Do you have any understanding 20 as to whether the rate at which perc will 21 deteriorate asphalt is any different than TCE 22 or any of the other solvents identified in 23 that document? 24 A I don't know what the specifics 25 are, but I believe that perc would do it even</p>

30 (Pages 117 to 120)

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Page 121		Page 122	
1	Alvey	1	Alvey
2	quicker.	2	historical runoff referred to in that sentence
3	Q And why is that?	3	is the primary cause of the contamination
4	A Because it's generally considered a	4	detected by U.S. EPA in, I believe, what you
5	more -- a better solvent than trichlor.	5	have referred to as the northwest corner area
6	Q And what do you mean by a better	6	of this site?
7	solvent?	7	A No.
8	A That it dissolves things more	8	Q What do you believe is the primary
9	rapidly.	9	cause of that contamination?
10	Q And why is that?	10	A I didn't really determine what is
11	A I'm not an organic chemist, but I	11	the primary cause. I mean, what I say here
12	believe it's due to the fact that it has	12	is that there are many different causes
13	additional chlorine.	13	potentially.
14	MR. LYNCH: Mark this as the next	14	Q What are the many different
15	exhibit.	15	potential causes of contamination in the
16	(Deposition Exhibit 2545 was	16	northwest corner?
17	marked.)	17	A Well, I mean, I have listed here
18	Q (BY MR. LYNCH) And is that the other	18	the ditches, obviously. And then I also have
19	document referred to in Appendix B, the bulk	19	overflow or discharges from the catch pond
20	handling and --	20	and evaporation ponds and migration of
21	A It is.	21	contaminants from other source areas on site.
22	Q -- properties document? If you turn	22	Q Any other causes --
23	to page 2 of that document you'll see that	23	A Well --
24	there's some highlighting on that page. And I	24	Q -- of the contamination in the
25	will represent for the record that's actually	25	northwest corner?
1	Alvey	1	Alvey
2	my highlighting. And if you want, I can read	2	A -- you could include drum storage
3	that into the record what it states.	3	back there. We have aerial photo
4	A That's the PPG document.	4	documentation of drum storage in that area.
5	Q It states, Spills of chlorinated	5	Let's see. What else? Certainly the ponds.
6	solvent can quickly damage asphalt surfaces	6	Migration of anything. Any spills or leaks.
7	and should be properly cleaned up.	7	And that's all that I can determine for now.
8	Is that the statement in that	8	Q Based on your review of the
9	document to which you were referring to as the	9	investigative data and other data cited in
10	basis for your understanding as to the rate at	10	your reports, have you formed an opinion as to
11	which perc deteriorates asphalt?	11	which of these potential causes is the likely
12	A Yes, it is.	12	cause of the contamination in the northwest
13	Q If you can turn to page 11 of your	13	corner?
14	September 6 report. I'll direct your	14	MR. GROSSBART: Would you reread the
15	attention to -- Opinion 6 on that page of the	15	question, please.
16	report discusses what you refer to here as the	16	Q (BY MR. LYNCH) Based on your review
17	northwest corner area of the site. On the	17	of the investigative data and the other
18	second sentence of that it states, It is my	18	documents identified in your reports have you
19	further opinion that the source of this	19	formed an opinion as to which of these
20	contamination is likely due at least in part	20	potential causes is the likely cause of the
21	to historical runoff from operational portions	21	contamination?
22	of the site, comma, which was captured by	22	MR. DAVIS: Object as to foundation
23	ditches and discharged in this undeveloped	23	and the form of the question. You phrase it
24	portion of the site, period.	24	as though one excludes all the others, and I
25	Is it your opinion that the	25	don't know that that's his testimony.

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1	Alvey	1	Alvey
2	MR. GROSSBART: Right. And if he's	2	even prior to Dyce.
3	formed an opinion in his report -- I think he	3	Q You refer to historical runoff from
4	said he didn't form an opinion. But go ahead.	4	operational portions of the site. Is there
5	I mean, do --	5	any particular portion of the site you're
6	A Yeah. I did not try to determine	6	referring to? And we can --
7	what I thought was the most likely source out	7	MR. GROSSBART: Are you asking him
8	there, just that any or all of those factors	8	what he means by operational portions?
9	could have contributed to the contamination.	9	MR. LYNCH: Yes.
10	I might add to my list, now that I am	10	MR. GROSSBART: Do you want a photo
11	thinking about it, off-site sources.	11	or a diagram? Where's all the photos that
12	Q (BY MR. LYNCH) I want to make sure I	12	were marked as exhibits?
13	have this clear. So you're not offering an	13	THE DEPONENT: They're under here.
14	opinion as to what the likely source of the	14	MR. GROSSBART: Do you want me to
15	contamination in the northwest corner is;	15	show him one of those photos?
16	you're merely opining that there are many	16	MR. LYNCH: I have a blowup of it.
17	possible sources of the contamination in the	17	Let's mark this as the next exhibit.
18	northwest corner?	18	(Deposition Exhibit 2546 was
19	A Correct. I am not -- I did not, in	19	marked.)
20	my opinion, select a given scenario as most	20	Q (BY MR. LYNCH) I'm showing you
21	likely. I'm saying that, like I just said a	21	what's been marked as Exhibit 2546. I believe
22	minute ago, any or all of those could have	22	it has a date of 1995 in the lower right-hand
23	contributed.	23	corner. Do you recognize that as a diagram of
24	Q But you have no opinion as to	24	the Dyce site?
25	whether, in fact, any or all of those did, in	25	A I do.
Page 126		Page 126	
1	Alvey	1	Alvey
2	fact, contribute?	2	Q Okay. Can you identify on that
3	A Yeah. My opinion is not that any	3	diagram where -- what you're referring to when
4	one is the source.	4	you talk about operational portions of the
5	Q You identify one of the potential	5	site?
6	sources in -- that's expressed in Opinion 6 as	6	A Basically everything would be
7	historical runoff. You use the term	7	operational except the parking lot, which may
8	"historical." Do you have an opinion as to	8	also be considered operational if trucks are
9	when that occurred?	9	driving through there.
10	A During the entire history of the	10	Q Okay. So it's your opinion that
11	site.	11	runoff from any part of the area you have just
12	Q Am I correct that it's your opinion	12	circled could be captured by ditches and be
13	that you can't date the contamination at the	13	discharged in the northwest corner of the
14	Dyce site based on the investigative data?	14	site?
15	A I have not attempted to date it.	15	A No. That's not what I am saying.
16	Q It's your opinion that the	16	Q Okay. Tell me --
17	contamination could have occurred anytime	17	A I mean, there were ditches that you
18	between 1972, when Dyce purchased the site, up	18	see in the aerials certainly along this side
19	to the time the contamination was detected by	19	of the -- the site, the --
20	U.S. EPA or their agents?	20	Q Why don't you identify on the
21	A I mean, at least in that time	21	diagram where the ditch is --
22	frame. I mean, if there was a source from	22	A Well, roughly --
23	offsite. I mean, if -- like John said, if	23	Q -- that you are referring to.
24	someone drove a truck out in the northwest	24	A -- roughly where the ditches are.
25	corner, that could have happened at any time	25	And then over here somewhere.

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<p>1 Alvey</p> <p>2 the northwest corner area. What -- what about</p> <p>3 the source is distinct -- the source of the</p> <p>4 contamination in the northwest corner area is</p> <p>5 distinct from the sources of the contamination</p> <p>6 found in the other areas?</p> <p>7 A Well, that there's no BTEX there</p> <p>8 sensibly.</p> <p>9 Q And what does that indicate about</p> <p>10 the source of the northwest corner area -- of</p> <p>11 the contamination found in the northwest</p> <p>12 corner area?</p> <p>13 A That there was no BTEX -- or</p> <p>14 limited BTEX was in that source.</p> <p>15 Q Do you agree that the source of the</p> <p>16 northwest corner contamination then is</p> <p>17 predominantly a release of perchlorethylene as</p> <p>18 opposed to other -- any other chemicals?</p> <p>19 A I mean, the contamination that was</p> <p>20 found in the northwest corner was</p> <p>21 predominantly perc. There was some TCE there</p> <p>22 also.</p> <p>23 Q Is that indicative that perc</p> <p>24 infiltrated the surface in that area, whereas</p> <p>25 other chemicals didn't?</p>	<p>1 Alvey</p> <p>2 Q Any other basis?</p> <p>3 A I don't believe there's any</p> <p>4 historic records, but it's just a potential</p> <p>5 of a way for things to get out there.</p> <p>6 Q Do you know if any other witness</p> <p>7 disputed Marvin Johnson's testimony that water</p> <p>8 was discharged from the historic catch pond?</p> <p>9 A I don't recall if it was disputed</p> <p>10 or not. It just seemed to me like if you</p> <p>11 have a pond of liquid there it could have</p> <p>12 overflowed or been released out there.</p> <p>13 Q Aside from Marvin Johnson's</p> <p>14 testimony and perhaps the testimony of other</p> <p>15 employees you can't recall here today, you</p> <p>16 have no basis for believing that that did or</p> <p>17 did not happen?</p> <p>18 A Yeah. I don't believe Dyce</p> <p>19 provided any documents that indicated whether</p> <p>20 it did or did not. And I certainly wasn't</p> <p>21 there at the time.</p> <p>22 Q Can you answer my question?</p> <p>23 MR. GROSSBART: Just answer his</p> <p>24 question.</p> <p>25 A Oh, I'm sorry. Any other --</p>
<p>1 Alvey</p> <p>2 A I mean, what it indicates is that</p> <p>3 there's perc there and there's not other</p> <p>4 chemicals there.</p> <p>5 Q And what does that indicate about</p> <p>6 the source of the perc there?</p> <p>7 A That again, it appears to be</p> <p>8 primarily a release of perc -- releases of</p> <p>9 perc.</p> <p>10 Q The second potential cause of the</p> <p>11 contamination in the northwest corner you have</p> <p>12 identified is the overflows from catch pond;</p> <p>13 is that correct?</p> <p>14 A I don't recall what order I gave</p> <p>15 them in.</p> <p>16 Q Well, let's look at -- go back to</p> <p>17 Opinion 6 then. Other contributing factors</p> <p>18 are overflows or discharges from the catch</p> <p>19 pond and/or evaporation ponds.</p> <p>20 Let's start with overflows or</p> <p>21 discharges from the catch pond. What's the</p> <p>22 basis for your opinion that those occurred?</p> <p>23 A At a minimum, Marvin Johnson said</p> <p>24 it. And I don't recall if there were other</p> <p>25 employees.</p>	<p>1 Alvey</p> <p>2 Q (BY MR. LYNCH) Any other basis?</p> <p>3 A Ah, no. No.</p> <p>4 Q What is your understanding as to how</p> <p>5 the discharges from the catch pond occurred?</p> <p>6 MR. GROSSBART: Other than what he</p> <p>7 has testified to? Asked and answered.</p> <p>8 Q (BY MR. LYNCH) How do you believe</p> <p>9 the discharges occurred?</p> <p>10 MR. GROSSBART: He didn't -- hasn't</p> <p>11 said they have occurred. He said he has seen</p> <p>12 evidence of it. He has told you about the</p> <p>13 evidence. But he's not here to give you an</p> <p>14 opinion as to what caused the contamination in</p> <p>15 the northwest corner. So now you're taking it</p> <p>16 and saying, how did it happen, and he</p> <p>17 hasn't -- and there's no foundation. You know</p> <p>18 what I am saying.</p> <p>19 Q (BY MR. LYNCH) Well, then we'll go</p> <p>20 with what your attorney said. At trial do you</p> <p>21 expect to offer any testimony as to what</p> <p>22 caused the contamination in the northwest</p> <p>23 corner?</p> <p>24 MR. GROSSBART: As opposed to</p> <p>25 possibilities.</p>

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<p>1 Alvey</p> <p>2 A I mean, I'm not going to testify</p> <p>3 that there was a single activity. I will</p> <p>4 testify that there are different</p> <p>5 possibilities of the way that contamination</p> <p>6 occurred.</p> <p>7 Q (BY MR. LYNCH) Are you going to</p> <p>8 offer any testimony as to whether any of those</p> <p>9 possibilities -- strike that.</p> <p>10 A Are you going to offer testimony as</p> <p>11 to whether the contamination is more likely</p> <p>12 than not the result of any of those</p> <p>13 possibilities or a combination of those</p> <p>14 possibilities?</p> <p>15 A I -- I mean, I think I'm going to</p> <p>16 testify that I don't think the alleged spill</p> <p>17 caused it, because that's what my opinion is,</p> <p>18 and that there are many other likely sources.</p> <p>19 Q So you are going to testify that the</p> <p>20 other sources are likely -- are the likely</p> <p>21 causes?</p> <p>22 A Any of these. Not -- not a</p> <p>23 specific one, but that there are other</p> <p>24 contributing factors.</p> <p>25 MR. GROSSBART: He'll testify that</p>	<p>1 Alvey</p> <p>2 MR. LYNCH: He's got overflows or</p> <p>3 discharges in his report.</p> <p>4 MR. GROSSBART: So you want him to</p> <p>5 distinguish between an overflow, which I --</p> <p>6 I --</p> <p>7 MR. LYNCH: Let me ask the witness.</p> <p>8 MR. GROSSBART: Okay.</p> <p>9 Q (BY MR. LYNCH) How do you use --</p> <p>10 what do you mean by an overflow from the catch</p> <p>11 pond?</p> <p>12 A An overflow would be it got filled</p> <p>13 up too far and went over the banks of the</p> <p>14 pond.</p> <p>15 Q Okay. And what do you mean by a</p> <p>16 discharge from the catch pond?</p> <p>17 A A discharge? Again, we would have</p> <p>18 to look at Marvin Johnson's -- or -- and</p> <p>19 whatever other employees -- how they talk</p> <p>20 about the method of discharge from the pond.</p> <p>21 But it could be several different ways.</p> <p>22 Q Sitting here today you don't -- do</p> <p>23 you have a recollection as to what the method</p> <p>24 of discharge Mr. Johnson testified to was?</p> <p>25 A I -- I believe that he said they</p>
<p>1 Alvey</p> <p>2 Mr. Harris was right the first time.</p> <p>3 MR. DAVIS: Or Sullivan.</p> <p>4 Q (BY MR. LYNCH) In your view is the</p> <p>5 investigative data regarding the contamination</p> <p>6 that's been found below the northwest corner</p> <p>7 source area consistent with that contamination</p> <p>8 having been caused by an overflow from the</p> <p>9 catch pond?</p> <p>10 A Is the investigation consistent?</p> <p>11 Q The sampling data.</p> <p>12 MR. GROSSBART: In whole or part,</p> <p>13 right?</p> <p>14 MR. LYNCH: In whole or part.</p> <p>15 A I mean, I think the data indicates</p> <p>16 that it could have come from the catch basin.</p> <p>17 Q (BY MR. LYNCH) My question was a</p> <p>18 little more narrow than that. I'm talking</p> <p>19 just overflows from the historic catch pond.</p> <p>20 A Overflows from the historic catch</p> <p>21 pond?</p> <p>22 MR. GROSSBART: As opposed to --</p> <p>23 wait a second. He has just said it could have</p> <p>24 come from the catch pond, and you are making a</p> <p>25 distinct between --</p>	<p>1 Alvey</p> <p>2 put a hose on. I don't know if it was any</p> <p>3 more specific than that.</p> <p>4 Q Do you have an opinion as to whether</p> <p>5 or not the DNAPL contamination that's been</p> <p>6 identified in the northwest corner source area</p> <p>7 originated from an overflow from the catch</p> <p>8 pond?</p> <p>9 MR. GROSSBART: Again, same problem.</p> <p>10 Are you -- are you asking him whether it's a</p> <p>11 possibility, or are you asking if he's</p> <p>12 determined whether that is the case --</p> <p>13 MR. LYNCH: More likely than not.</p> <p>14 MR. GROSSBART: That doesn't solve</p> <p>15 the problem. Are you asking him to give you a</p> <p>16 -- whether he has an opinion to a reasonable</p> <p>17 degree of scientific certainty that the</p> <p>18 pollution in the northwest corner was caused</p> <p>19 by a discharge from the catch pond, or are you</p> <p>20 asking him if it's a possibility? Those are</p> <p>21 different questions. And you -- we have been</p> <p>22 jumping back and forth, and I would like you</p> <p>23 to be distinct.</p> <p>24 MR. LYNCH: I'll separate the two</p> <p>25 then.</p>

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<p>1 Alvey</p> <p>2 MR. GROSSBART: Okay.</p> <p>3 Q (BY MR. LYNCH) Do you have an</p> <p>4 opinion as to a reasonable degree of</p> <p>5 scientific certainty as to whether the DNAPL</p> <p>6 contamination found in the northwest corner</p> <p>7 source area was caused by an overflow from the</p> <p>8 catch pond?</p> <p>9 A No. I mean, my opinion, as is</p> <p>10 stated, is that it's possible.</p> <p>11 Q Do you have an opinion as to a</p> <p>12 reasonable degree of scientific certainty that</p> <p>13 the contamination found in the northwest</p> <p>14 corner source area was caused by historical</p> <p>15 runoff from the operational portions of the</p> <p>16 catch pond?</p> <p>17 A Now again I'm saying it's --</p> <p>18 MR. DAVIS: Whoa, whoa, whoa.</p> <p>19 Historical runoff from the operational</p> <p>20 portions of the catch pond.</p> <p>21 MR. LYNCH: I'm sorry. Yes, I</p> <p>22 misspoke.</p> <p>23 Q (BY MR. LYNCH) Do you have an</p> <p>24 opinion as to a reasonable degree of</p> <p>25 scientific certainty that the contamination</p>	<p>1 Alvey</p> <p>2 the question. You keep narrowing it down to</p> <p>3 the cause, and I don't think he has got that</p> <p>4 opinion.</p> <p>5 Q (BY MR. LYNCH) Okay. Or a cause.</p> <p>6 We'll change it to a cause.</p> <p>7 A I'm going to opine that it is a</p> <p>8 possible cause.</p> <p>9 Q Now I'm confused. So just so I have</p> <p>10 it straight, you will be -- am I correct that</p> <p>11 at trial you will be offering the opinion</p> <p>12 that to a reasonable degree of scientific</p> <p>13 certainty it is possible that the various</p> <p>14 potential causes you have identified today are</p> <p>15 a cause of the contamination found by U.S. EPA</p> <p>16 in the northwest corner source area?</p> <p>17 MR. GROSSBART: That's not the full</p> <p>18 summation of what he -- of his opinion.</p> <p>19 MR. DAVIS: I mean, all I think</p> <p>20 you're doing now is repackaging his Opinion 6,</p> <p>21 which I think is pretty straightforward, if</p> <p>22 you look at it.</p> <p>23 Q (BY MR. LYNCH) Well, Opinion 6 you</p> <p>24 say that the source of the contamination is</p> <p>25 likely due. And now today you have been</p>
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1	Alvey	1	Alvey
2	put this on.	2	A Yes. Okay.
3	(The last pending question was read	3	Q We have talked a little bit about
4	back.)	4	this. I just want to see if this refreshes
5	A I have not attempted to age date	5	your memory at all as to which employees
6	the PCE.	6	testified regarding the residuals being
7	Q (BY MR. LYNCH) What do you mean by	7	emptied onto the ground.
8	relatively new?	8	A The individual names?
9	A Just relatively new. I don't have	9	Q Yes.
10	any -- I don't have any specific thing in	10	A No, I don't recall.
11	mind. Just that in looking at it, newer than	11	Q It's your recollection that at least
12	the catch pond, I guess is what jumped out at	12	some employees said specifically that it was
13	me. All I'm saying is that I don't think the	13	PCE and TCE residuals that were emptied onto
14	catch pond was the principal source. So the	14	the ground?
15	fact that the catch pond was there a long	15	A That's what I wrote here, so that
16	time ago contributed to the fact that I	16	must have been my understanding when I read
17	didn't think it was the principal source.	17	the depositions.
18	Q Do you know when the catch pond	18	Q Do you have any understanding based
19	was -- do you have an understanding as to when	19	on your review of the testimony and other
20	the catch pond was done away with or	20	evidence as to what percentage of the barrels
21	discontinued?	21	that were returned to the Dyce site at any
22	A Again, I could look at the aerials	22	given time were perc barrels as opposed to
23	to tell you for sure. But in the '80s	23	barrels that contained some other chemical?
24	sometime.	24	A I do not.
25	Q So to summarize -- and correct me if	25	MR. GROSSBART: Do you mean to
Page 162		Page 164	
1	Alvey	1	Alvey
2	I'm wrong -- is it your opinion that the	2	distinguish between perc and TCE in that
3	makeup of the contamination in the northwest	3	question?
4	corner, meaning the degradation information,	4	Q (BY MR. LYNCH) We'll start out with
5	suggests that the contamination got there	5	perc.
6	sometime after the catch pond was done away	6	A I would have to re-review the
7	with in the '80s?	7	deposition testimony.
8	A That's not really what I am saying.	8	Q If the testimony indicated that at
9	I'm just saying that what the contamination	9	least during the period when the alleged
10	looks like indicates to me that the catch	10	dumping from barrels occurred only a small
11	pond isn't the principal source; that there	11	fraction of the barrels that were stored at
12	are other sources in addition to the catch	12	the Dyce site were, in fact, PCE barrels,
13	pond -- other possible sources.	13	would that make it less likely that barrel
14	Q At trial do you expect to offer any	14	dumping would be a contributing cause or
15	opinion as to when the perc contamination	15	possible cause of the contamination in the
16	found in the northwest corner likely got into	16	northwest corner?
17	the subsurface?	17	MR. GROSSBART: Objection to the
18	A My opinions as I present them so	18	question. Small fraction of how many barrels?
19	far do not, so no.	19	MR. DAVIS: Objection; vague.
20	Q Go to your rebuttal report, page 5,	20	MR. GROSSBART: I mean, does --
21	the first bullet point. You can read that to	21	Q (BY MR. LYNCH) If the testimony
22	yourself. And let me know when you're	22	indicated that at any -- that 300 barrels were
23	finished, please.	23	stored at the Dyce site at a given time and
24	A The one about the drums?	24	that less than five of those barrels were perc
25	Q Yes.	25	barrels --

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<p>1 Alvey 2 farm area. 3 Q I believe we covered this before, 4 but am I correct that you do not have an 5 opinion as to what the cause of the 6 contamination in the acid tank farm area of 7 the site is? 8 A That's correct. My opinion is just 9 that it's not caused by the alleged spill. 10 Q And with respect to the northwest 11 corner source area, am I correct that you do 12 not have an opinion to a reasonable degree of 13 scientific certainty as to what the cause was 14 other than that there are potentially several 15 multiple possible causes for that 16 contamination? 17 MR. GROSSBART: Asked and answered, 18 but go ahead. 19 A I would say that's correct, but my 20 opinion is there's many things that could 21 have. 22 Q (BY MR. LYNCH) If you can turn in 23 your rebuttal report, Opinion No. 3. And you 24 can read the opinion to yourself, and let me 25 know when you are finished.</p>	<p>Page 193</p> <p>1 Alvey 2 Q I'm just talking about the date, I'm 3 sorry, now. 4 A Oh, the date. 5 Q The date. 6 A I did not attempt to date it. 7 Q As far as you know, there's nothing 8 in the record that would preclude a conclusion 9 that the release occurred in the 1975 to '77 10 time frame? 11 A I don't believe there's anything 12 that would preclude it. 13 MR. GROSSBART: From a date 14 standpoint? 15 THE DEPONENT: From a date 16 standpoint, certainly. 17 MR. LYNCH: I have nothing further. 18 MR. DAVIS: Well, let me -- just to 19 clarify, I mean going back to your testimony 20 about 20/30 minutes ago, Peter, I think you at 21 some point earlier today had indicated that 22 the amount of prephase perc in the northwest 23 corner was consistent with a far more 24 current -- I mean, the lack of -- I think you 25 determined daughter products --</p>
<p>1 Alvey 2 A Okay. 3 Q Is it your opinion that based on the 4 contamination and/or data collected at the 5 SOCO West site by U.S. EPA, MDEQ can't date 6 the release that caused -- releases that 7 caused the contamination at the site? 8 MR. GROSSBART: Asked and answered. 9 Go ahead. 10 A I mean, that's not what that 11 opinion says. 12 Q (BY MR. LYNCH) Well, what is your 13 opinion then? 14 A Well, the opinion says that there's 15 nothing about the data that supports 16 Dr. Harris' contention that the contamination 17 is the result of an incident which occurred 18 in the 1970s. 19 Q Is there anything about the data 20 that tends to refute Dr. Harris' contention as 21 to the date of the incident? 22 A Well, again, we talked about the -- 23 kind of the lack of data. But the data that 24 does exist along the railroad tracks tends to 25 indicate that PCE didn't go down that ditch.</p>	<p>Page 194</p> <p>1 Alvey 2 THE DEPONENT: Right. 3 MR. DAVIS: -- you used? And so 4 does -- that data, is that more or less 5 consistent with Mr. Harris -- or Dr. Harris' 6 conclusions? 7 A I mean, just -- 8 MR. DAVIS: The data on the -- on 9 the -- on the -- what's in there? 10 THE DEPONENT: In the northwest 11 corner if you just look at the data 12 qualitatively just look at it, it tells you it 13 was a recent spill because of the lack of 14 daughter products. No scientific calculation, 15 just looking at it, I would say that it's a 16 recent spill. Relatively recent. 17 MR. LYNCH: Are you finished with 18 that? I have a quick follow-up on that. 19 Q (BY MR. LYNCH) Looking at the data, 20 as you have indicated, are there other 21 explanations as to why there might be more PCE 22 than its daughter products, other than it 23 being a relatively recent spill? 24 A There could be other -- other -- 25 other issues, I guess, that would -- would</p>

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1 Alvey 2 account for it. 3 Q What variables will affect the 4 degradation rate of PCE?	Page 197 2 (Time noted: 3:46 p.m.) 3 4	Page 199
5 A All kinds of things. I mean, other 6 contaminants in -- in the system, the soil 7 type, the microbes in the area, the amount of 8 dissolved oxygen, the amount of nitrogen.	5 PETER D. ALVEY, P.E. 6 Subscribed and sworn to before me 7 this _____ day of _____, 2006.	
9 Any number of things. There's a lot of 10 variables that affect the degradation rate.	8 9 10	
11 Q So is it fair to say that to reach 12 an opinion with any reasonable degree of 13 scientific certainty as to whether or not 14 this -- the data indicates a recent spill, a 15 release, you need to take into consideration 16 each of those variables?	11 12 13 14 15 16	
17 A Those are variables that you would 18 want to take into consideration, yes.	17 18	
19 Q Without taking those into 20 consideration can you form an opinion with a 21 reasonable degree of scientific certainty that 22 this was a recent release as opposed to a 23 release that might have occurred in the 1970s?	19 20 21 22 23	
24 A As I said earlier today, I have not 25 attempted to age date the contamination.	24 25	
1 Alvey 2 Q So you have no opinion to a 3 reasonable degree of scientific certainty as 4 to when this release occurred?	Page 198 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 200
5 A Again, I have not attempted to make 6 that calculation.	2 CERTIFICATE 3 STATE OF NEW YORK) 4 : Ss 5 COUNTY OF NEW YORK)	
7 MR. GROSSBART: Anything else, Max?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	
8 MR. DAVIS: I don't think so. No.	I, Mary Goff, a Professional Reporter and Notary Public within and for the State of New York,	
9 MR. GROSSBART: Okay.	do hereby certify:	
10 (A break was taken from 3:40 p.m. to 11 3:45 p.m.)	11 That PETER D. ALVEY, P.E., the 12 witness whose deposition is hereinbefore set	
12 MR. LYNCH: We're back on the 13 record. It's my understanding that counsel	13 forth, was duly sworn by me and that such 14 deposition is a true record of the testimony 15 given by the witness.	
14 have now reached an agreement that they will 15 be exchanging the spreadsheets and documents	16 I further certify 17 that I am not related to any of the parties to 18 this action by blood or marriage, and that I 19 am in no way interested in the outcome of this 20 matter.	
16 that support the calculations made in the 17 report of Mr. Alvey and then also the 18 calculations that are referred to and opined 19 to in the report of Dr. Harris; is that 20 correct?	21 IN WITNESS WHEREOF, I 22 have hereunto set my hand this 16th day of 23 January 2006.	
21 MR. GROSSBART: Correct.	24 25	
22 MR. LYNCH: I believe that's it.	MARY GOFF	

50 (Pages 197 to 200)